TRADING TERMS AND CONDITIONS OF SALE

1. Agreement

1.1. These terms and conditions ("**Terms**") shall apply to any agreement for the sale of any and all goods and the provision of services by the Supplier (as defined below) to the Customer.

1.2. Where the Customer makes an order with Locker or Webforge, the "**Supplier**" is Webforge (NZ) Limited (NZCN 24989).

1.3. In the absence of any other written agreement, these Terms shall be the only terms and conditions applicable to the agreement.

1.4. The Customer agrees to comply with and abide by these Terms.

1.5. Without limiting clause 1.1, all terms and conditions set out in any printed document issued by the Customer (including any purchase order) are expressly excluded.

1.6. These Terms have effect as amended by the Supplier from time to time in its absolute discretion. The Supplier will provide the Customer reasonable notice of any changes to these Terms.

1.7. If the Customer places any orders with the Supplier after the receipt of these Terms or any amendment of these Terms as notified above, the Customer will be deemed to have accepted these Terms or any amendment of these Terms.

2. Orders, quotes and pricing

2.1. Prices quoted in writing by the Supplier are valid for a period not exceeding 30 days. The Customer should reconfirm pricing prior to confirming an order with the Supplier if outside of this validity period.

2.2. Where a written quotation has been given by the Supplier, the selling price is the price specified in that quotation. In any other case, the Supplier's price list shall prevail as at the date of despatch. Unless otherwise stated, the selling price is exclusive of goods and services tax in terms of the *Goods and Services Tax Act 1985* ("**GST**"), at the rate prevailing from time to time, including any tax levied in substitution from that tax.

2.3. All orders are subject to acceptance by the Supplier. Any acceptance of orders by the Supplier are subject to the Supplier's factory schedules, capacity, product and staff availability at the time such order is received.

2.4. Where the Supplier accepts an order involving import and export conditions, that acceptance shall be subject to the Customer supplying evidence to the satisfaction of the Supplier that all requisite licences and permits have been granted and that the Customer has complied with all other Government authorisations and conditions (both New Zealand and countries of destination). If such evidence is not provided within 30 days from the date of acceptance of an order, the order may be cancelled by the Supplier.

2.5. Where special or manufactured to order products are specified in an order which is accepted by the Supplier, the estimated delivery period commences progressively from date of receipt of final "approved for construction" drawings and a customer purchase order, or signed Supplier sales order as appropriate. Any additional costs necessarily incurred due to changes initiated by the Customer will be charged to the Customer.

2.6. Any agreement for the sale of goods or services by the Supplier is subject to the Supplier's standard manufacturing variations, tolerances and classifications, as applicable and as notified to the Customer by the Supplier.

2.7. No order may be cancelled by the Customer without the consent in writing of the Supplier. If the Supplier consents to the cancellation, it may require the Supplier to compensate it for any losses necessarily incurred by reason of the cancellation.

2.8. The Supplier shall not be obligated to ship to any country other than New Zealand or Australia.

3. Payment / Account Term

3.1. If the Supplier has not granted credit to the Customer, payment must be received in the Supplier's bank account before goods or services are delivered. For manufactured to order goods, the Supplier reserves the right to require receipt of payment prior to commencing the manufacturing process. No payment shall be deemed to have been received until the Supplier has received cleared funds and all payments must be made without any deduction by set–off or counterclaim.

3.2. In the event that the Supplier agrees to offer credit to the Customer, all goods and/or services supplied by the Supplier to the Customer shall be paid for in full by the Customer no later than 30 days from the end of month in which the Supplier's invoice is issued to the Customer or as otherwise specified by the Supplier ("**Due Date**").

3.3. Payments made via credit card may attract a surcharge at the applicable rates as notified by the Supplier. The surcharge rate is applied against the full value of the payment being made. The Supplier reserves the right to charge you any Government taxes or charges that are, or may be, imposed in respect of the credit card surcharge.

3.4. Where the Supplier has agreed to offer credit terms to the Customer and the Supplier, acting reasonably, becomes aware of any circumstances or events pertaining to the creditworthiness of the Customer, the Supplier may, by notice in writing to the Customer vary the terms of payment (including the Due Date), withdraw the credit facility or vary the credit limit, and require payment in cash in full prior to delivery of further goods or services. If the credit limit is lowered, the Customer must, within 7 days of notification, pay to the Supplier the difference between the current debt owed to the Supplier, and the new credit limit.

3.5. Where the Customer fails to pay amounts owing to the Supplier by the Due Date, the Supplier may, by notice in writing to the Customer:

3.5.1. defer or withhold further shipments to the Customer;

3.5.2. require immediate payment of all money unpaid by the Customer;

3.5.3. withdraw credit facilities offered to the Customer;

3.5.4. charge interest in accordance with clause 3.6;

3.5.5. enforce its security interest in accordance with clause 10;

3.5.6. terminate any agreement with the Customer; or

3.5.7. charge the Customer all costs and expenses incurred as a result of the collection or attempted collection of any invoiced amount or other amount payable under these Terms, including but not limited to any dishonoured cheque fees, debt collection agency fees, stamp duties and solicitor's fees on an indemnity basis.

3.6. Interest on all outstanding moneys will accrue on a daily basis until paid at a rate of interest per annum equal to the standard interest rate charged from time to time by Australia and New Zealand Banking Group Limited on overdraft accounts for sums up to $500,000 New Zealand dollars, plus an additional two (2) percent.

3.7. The Customer must pay the cost of any GST, stamp duty and sales, excise, value added, consumption or any other tax or imposts applicable to the relevant transaction under these Terms.

4. Delivery

4.1. The Supplier shall deliver to the delivery place nominated in the order placed by the Customer and accepted by the Supplier ("**Place of Delivery**").The Customer must pay the Supplier delivery charges in accordance with the Supplier's current rates.

4.2. The Customer authorises the Supplier to deliver goods to the Place of Delivery and to effect delivery by leaving the goods at the Place of Delivery whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for any loss or damage to the goods occurring after delivery to the Place of Delivery.

4.3. The Customer will provide reasonable means of access to and from the Place of Delivery and any necessary equipment and labour to facilitate the efficient delivery and unloading of goods. Any goods which cannot be delivered by reason of the Customer's default under these Terms will be stored and handled by the Supplier at the Customer's cost and risk, such costs being payable within 7 days of written demand.

4.4. The Supplier shall not be obliged to obtain a signed receipt or other acknowledgement at the Place of Delivery. However, if a signed receipt or other acknowledgment of delivery is obtained from a person at the Place of Delivery who appears to be authorised by the Customer to sign or otherwise take delivery, then, to the extent permitted by law, such signed receipt or other acknowledgement shall be conclusive evidence of delivery, the quantity of goods delivered, the lack of defects in such goods and otherwise compliance with the order.

4.5. Time is not of the essence in relation to delivery and any time quoted for delivery is an estimate only. The Supplier shall not be liable for any delay in delivery of goods or services for any reason, including without limitation any strike, lockout, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or Acts of God.

4.6. Freight costs (whether included in the quoted price or charged separately) are based on punctual unloading by the Customer. The Customer will be liable for any additional costs arising from delays in unloading or incomplete loading.

4.7. If the goods are to be collected, the goods shall be collected by the Customer from the premises specified in the order. The goods shall be deemed to be delivered to the Customer when collected by the Customer or loaded on to the carrier's vehicle at the Supplier's premises (even if the Supplier has engaged the carrier).

5. Acceptance and Claims

5.1. On submitting an order the Customer acknowledges that the goods ordered and/or services requested are suitable for the intended purpose for which they have been ordered. The Supplier need not confirm the Customer's purpose and requirements for the goods and services.

5.2. Within 48 hours of delivery or collection, or 24 hours after the Customer learns of the facts giving rise to a claim, whichever first occurs, the Customer must notify the Supplier in writing of any defect or claim regarding goods or services provided by the Supplier, with full details of the claim, in the absence of which, the Customer to the extent permitted by law is deemed to agree that the goods and services conform those ordered.

5.3. The Supplier will not be liable for any claims of damages in respect of goods which, at the date of the claim or at any time prior to settlement of the claim, have been incorporated into any other goods or product or affixed to land.

6. Indemnity

6.1. The Customer indemnifies the Supplier against all losses, costs, expenses and liabilities reasonably incurred by the Supplier (including legal costs on an indemnity basis) in connection with any claim, demand, action, arbitration or other proceeding to the extent caused, or contributed to, by a breach of these Terms by the Customer or any negligent act or omission by the Customer.

7. Warranties and liability

7.1. To the maximum extent permitted by law, the Supplier disclaims and excludes all other terms, representations, warranties, conditions, statutory guarantees and obligations (whether express or implied), apart from those contained in any compliance statement issued by the Supplier to the Customer.

7.2. In relation to any condition, warranty, representation or statutory guarantee implied or provided by law that cannot be lawfully excluded, to the maximum extent permitted by law, the liability of the Supplier is limited to (at the discretion of the Supplier):

7.2.1. in the case of a supply of goods by the Supplier, the replacement of the goods, the supply of equivalent goods, the repair of the goods or the payment of the cost of replacing the goods, acquiring equivalent goods or repairing the goods; or

7.2.2. in the case of a supply of services by the Supplier, the resupply of equivalent services or the payment of the cost of having those services resupplied.

7.3. To the maximum extent permitted by law, the Supplier shall not be liable to the Customer in any circumstances for any indirect, economic, special or consequential loss or damage, or in any event for any loss of revenue, loss of production or loss of profit.

7.4. Where the Customer is acquiring, or holds itself as acquiring, any goods for the purposes of a business in terms of section 43(2) of the *Consumer Guarantees Act 1993*, the Customer will not assert or attempt to assert any rights or claims against the Supplier under the provisions of that Act.

7.5. If the Customer is using the goods for business purposes, the Customer agrees that it is fair and reasonable for the Customer and the Supplier not to be bound by sections 9, 12A, 14 and 14(1) of the *Fair Trading Act 1986* in accordance with section 5D of that Act.

8. Return of Stock Items

8.1. Without limiting the Customer's rights in respect of defective goods or services, the Customer may only return supplied goods to the Supplier in accordance with this clause 8. To the extent permitted by law or these Terms, the Supplier is not obliged to authorise or accept the return of goods other than in accordance with this clause.

8.2. Goods may be returned for credit to the Customer's account if all of the following conditions are satisfied:

8.2.1. prior agreement has been reached with an authorised officer of the Supplier;

8.2.2. the goods are ordinarily sold by the Supplier as standard stock items;

8.2.3. the goods are returned within fourteen (14) days of the date of delivery of the goods;

8.2.4. the goods are returned undamaged, unused and in good and saleable condition;

8.2.5. the original invoice number and Supplier order number must accompany all goods returned to the Supplier; and

8.2.6. the goods are not manufactured to order goods.

8.3. Goods accepted for credit by the Supplier under this clause 8 will attract a charge (the amount of which shall be at the discretion of the Supplier but not less than 10% of the Supplier list price for those goods) to cover restocking and repacking charges. Such charges shall be deducted from the amount of credit allowed.

9. Non Stock Items

9.1. To the extent permitted by law, notwithstanding any other clause in these Terms, non stock items, being goods not stocked by the Supplier and ordered by the Supplier from its supplier in accordance with the Customer's specifications, are not returnable by the Customer to the Supplier.

10. Property and Risk

10.1. A term that is used in italics in this clause 10 has the same meaning as in the *Personal Property Securities Act 1999* ("**PPSA**").

10.2. Legal and equitable title in the goods shall not pass to the Customer until the purchase price for the goods and any related services has been paid in full to the Supplier by the Customer. Sole risk in the goods and the risk of any loss or damage to or deterioration of the goods, however caused, shall pass to the Customer immediately upon dispatch of the goods from the Supplier's premises.

10.3. Until such time as the title passes in accordance with paragraph 10.2 above, the Customer shall hold the goods as bailee for the Supplier on the terms set out below.

10.4. The Customer shall store the goods separately from other goods in the Customer's possession in a manner which clearly identifies those goods as the property of the Supplier.

10.5. Pending transfer of title the Customer grants to the Supplier a *security interest* in either every payment to the Customer for the goods or the portion of every payment for the manufactured product that relates to the goods (both as *proceeds* of the goods and as original *collateral*) and the Customer must not: (i) sell the goods or use the goods in a manufacturing or construction process, other than (subject to clause 10.6 below) in the ordinary course of its business; or (ii) sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the goods.

10.6. If the Customer sells, or agrees to sell, the goods or any manufactured products in the ordinary course of the Customer's business before title to the goods passes to the Customer, then:

10.6.1. the Customer must keep separate records in relation to the proceeds of the sale of any goods which have not been paid for, bank the proceeds of any such sale into a separate account on trust for the Supplier and immediately remit such funds to the credit of Supplier; and

10.6.2. if any goods are unused in a manufacturing process or mixed with other materials, the Customer shall record the value of the goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of sale to the Supplier.

10.7. The Customer must immediately cease selling the goods or using the goods in a manufacturing or construction process upon any of the following events occurring:

10.7.1. the Customer, being a natural person, commits an act of bankruptcy or is declared insolvent;

10.7.2. where the Customer is a body corporate, proceedings are commenced to wind up the Customer, the Customer becomes an externally administered body corporate, steps are taken towards making the Customer an externally administered body corporate, a receiver or liquidator is appointed over the Customer's undertaking or property or any part thereof the Customer, or the Customer is taken to have failed to comply with a statutory demand within the meaning of section 289 of the *Companies Act 1993*;

10.7.3. the Customer enters into some arrangement or assignment for the benefit of its creditors;

10.7.4. the Customer disposes of or parts with possession of the goods otherwise than as expressly authorised by these Terms; or

10.7.5. the Customer, in the reasonable opinion of the Supplier, is in breach of any of these Terms.

10.8. If any event referred to in clause 10.7 occurs, or the Customer does not pay for any goods and any related services by the Due Date, the Supplier or its agents are hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort or trespass, negligence or payment of any compensation to the Customer whatsoever.

10.9. The Customer acknowledges and agrees that:

10.9.1. clauses 10.1 to 10.8 create a *security interest* in all present and after acquired goods and any *proceeds* as security for the Customer's obligations to the Supplier;

10.9.2. the Supplier is a *secured party* in relation to the goods and any *proceeds* of the goods, and is entitled to register its interest as a *security interest*, and if applicable, a *purchase money security interest*;

10.9.3. the Customer must take all steps requested by the Supplier to ensure that the Supplier's *security interests* are enforceable and perfected (including providing all reasonable assistance in registering the *security interest* on the *register*);

10.9.4. the Supplier may search the *register* at any time for any information about the Customer;

10.9.5. it will give the Supplier not less than 14 days prior written notice of any proposed change in its name and/or any other change of its details;

10.9.6. immediately on request by the Supplier (and at the Customer's expense) obtain from any third party such agreements and waivers of *any security interest* that third party has in respect of the goods, to ensure that at all times the Supplier has a first priority *security interest* in the goods;

10.9.7. for the purposes of section 107 of the PPSA, sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA do not apply to these Terms; and

10.9.8. the Supplier is not obliged to give any notice, document or information under the PPSA unless it cannot be lawfully excluded, including but not limited to a copy of the *verification statement* or *financing change statement* relating to the *security interest* under these Terms.

10.10. If the Supplier already has a *perfected security interest* in goods previously supplied to the Customer, together with their proceeds, that *security interest* continues in relation to those goods and the goods supplied or to be supplied under these Terms.

11. Change of Control

11.1. The Customer must provide notice in writing to the Supplier of any change in the person with effective control over the Customer when compared to immediately before the initial acceptance of these Terms (ignoring any amendments or updates), as a result of changes to the membership or beneficial ownership (whether over the shares, business or assets) of the Customer ("**Change of Control**").

11.2. If, without the prior written consent of the Supplier, the Customer undergoes a Change of Control, the Supplier may, in its absolute discretion:

11.2.1. withdraw or vary credit facilities offered to the Customer; or

11.2.2. terminate any agreement with the Customer.

12. Sub-Contracting

12.1. The Supplier reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the goods or any of the materials or services supplied to the Customer.

13. Notices

13.1. Any notice to be given by the Customer to the Supplier shall be delivered to a director of the Supplier in writing. Notice to be given to the Customer by the Supplier may be delivered personally, by email, or sent to the Customer's last known address and, unless the contrary is proved, shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post or after four hours if sent by email.

14. Misuse of Account

14.1. The Customer will ensure no unauthorised persons use the Customer's account. If the Customer's business is sold the Customer will immediately notify the Supplier and close the account to prevent misuse and will remain liable for the account until written notification of change of ownership of the business has been received by the Supplier (subject to clause 10).

15. Personal Information

15.1. The Customer, to the extent they are an individual, agrees that the Supplier may collect, use and disclose personal information (as defined in the *Privacy Act 1993*, as amended from time to time ("**Privacy Act**")) about the Customer in the course of and for purposes related to these Terms, including verifying the Customer's identity, credit history and/or solvency, assessing the Customer's creditworthiness, risk and/or

solvency and enforcing any rights of the Customer. This personal information may be collected from, shared with or disclosed to the Supplier's related entities or third parties, including authorised agents, credit providers, credit reporting agencies and entities located outside New Zealand in countries that will vary from time to time, but may include Australia and the United States of America.

15.2. If the Customer provides incomplete or inaccurate information, the Supplier may refuse to provide goods and services or grant credit to the Customer.

15.3. By accepting these Terms and not opting out of the disclosure of personal information to any of the stated third parties, the Customer acknowledges that the Supplier is not subject to the relevant provisions of the Privacy Act, concerning such disclosures and it consents to the collection and disclosure of personal information under the terms of this clause 15. If the Customer, to the extent they are an individual, does not consent to any of the above disclosures, please provide notice in writing or contact the Supplier's privacy officer.

15.4. If the Customer, being an individual, requires further information about the collection, use or disclosure of personal or other information, the Customer should contact the Supplier as set out in the Supplier's privacy policy. The Supplier's privacy policy contains information about how to access and seek correction of the personal information the Supplier holds, how to complain about a breach of the information privacy principles set out in the Privacy Act and how the Supplier handles such complaints.

15.5. The Supplier's privacy policy is available on our website.

15.6. The Customer acknowledges and agrees that its disclosure of personal information to the Supplier is subject to the Privacy Act. The Customer warrants that it will only disclose personal information about its employees or other individuals to the Supplier for a purpose related to these Terms or the provision of goods and services by the Supplier to the Customer, provided the Customer has made all disclosures and obtained any consents required under the Privacy Act (including consent to disclosure of personal information to third parties), and provided to do so would not otherwise breach the Privacy Act.

16. Credit Information

16.1. This clause 16 will only apply where these Terms are attached to an application for account/credit terms ("**Application**").

16.2. The Customer acknowledges that the information provided in the Application is the basis for the evaluation by the Supplier of the financial standing and credit worthiness of the Customer and:

16.2.1. warrants that the information provided in the Application is true and correct;

16.2.2. authorises the Supplier to make such enquiries and receive such information about the Customer or its credit arrangements from other credit providers mentioned in the Application, including credit eligibility information and information about the Customer's credit worthiness, credit standing, credit history or credit capacity, to the extent that the Supplier is allowed to receive such information under the Privacy Act;

16.2.3. acknowledges that the Supplier in accordance with the Privacy Act, may keep certain items of personal information, including an opinion, about the Customer's credit application on a credit information file and that such information may be given to a credit reporting body;

16.2.4. in accordance with the Privacy Act, consents to the Supplier obtaining from a business which provides information about the commercial credit worthiness of persons, information concerning the Customer's commercial activities or commercial credit worthiness and using such information for the purpose of assessing the Application,

16.2.5. agrees that the above authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by the Customer from the Supplier.

16.3. If the Customer requires further information about the collection, use or disclosure of credit-related information, the Customer should contact the Supplier as set out in the Supplier's credit reporting policy. The Supplier's credit reporting policy contains information about, amongst other things, how to access and seek correction of the credit-related information the Supplier holds.

16.4. The Supplier's credit reporting policy is available on out website.

17. General provisions

17.1. Where there is more than one Customer, these Terms shall bind each of the Customers jointly and severally as well as their respective successors and assigns.

17.2. These Terms are governed by and shall be constructed in accordance with the laws of New Zealand and the parties hereby submit to the exclusive jurisdiction of the courts of New Zealand.

17.3. The headings used in these Terms do not form part of the agreement but are intended only to aid its interpretation.

17.4. Failure of either party to enforce any right hereunder shall not waive any right in respect of other or future occurrences.

17.5. The Supplier may assign these Terms by providing notice to the Customer. The Customer may not assign these Terms without the prior written consent of the Supplier.

17.6. If the Customer is a trustee, then it enters into each agreement with the Supplier in its personal capacity and in its capacity as trustee. The Customer must ensure that it has the power under the trust deed to perform its obligations under the agreement, and has a right to be indemnified out of the assets of the trust in relation to its obligations and liabilities under the trust deed.